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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Aliran Kesedaran Negara National Consciousness Movement, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Freedom of Expression in Malaysia*

Freedom of speech and expression is enshrined in Article 10.1(a) of the Federal Constitution of Malaysia. However, the guarantee of such a right is severely limited and qualified by broad provisions in Article 10.2(a), which stipulates that Parliament may impose *"such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence"*.

Parliament's power to define what is *'necessary or expedient'* has allowed executive arbitrariness and subjectivity. The power of the executive over the judiciary has long been a source of concern in the restriction of fundamental human rights. These concerns have been raised repeatedly at the international level, including at the recently concluded UN Universal Periodic Review (UPR) of Malaysia held in Geneva on 20 March 2014. Here it was noted that legislation including the Sedition Act, the Printing Presses and Publications Act, the Official Secrets Act, the Evidence Act, the Communications and Multimedia Act, the Film Censorship Act, and provisions of the Penal Code systematically undermine the freedoms of speech, expression and information. Eleven member States[1] raised concerns or made recommendations on freedom of expression and assembly in Malaysia.

Sedition Act 1948

This Act continues to be used to curtail freedom of expression despite a pledge by the Government to repeal the law.[2] Although the Government has indicated that a National Harmony Bill will replace the Sedition Act, there has been very little further information. Organisations including the Malaysian Bar and Suhakam are still not privy to the content of the proposed Bill and key stakeholders have been kept in the dark.

On 18 May 2013, 24-year-old student activist, Adam Adli, was arrested over remarks he made at a public gathering on 13 May 2013, at which he urged the public to take to the streets to protest against electoral fraud. He was investigated under Section 4 of the Sedition Act and Section 124 of the Penal Code for *'actions detrimental to parliamentary democracy'*[3]. He was interrogated for five days and remanded in poor conditions, including being forced to sleep without a pillow or blanket.[4] On 23 May, Anything But Umno (ABU) leader Haris Ibrahim, Parti Keadilan Rakyat (PKR) member of parliament Tian Chua, and Parti Islam Se-Malaysia (Pas) member of parliament Tamrin Ghafa were arrested under the Act for allegedly making seditious statements in the same forum. They were released on 23 May without any charges being brought against them; however, the police then re-arrested the three on 28 May.

Another student activist, Safwan Anang, along with civil society activist Hishamuddin Rais, was also arrested and charged under the Act, appearing at the Kuala Lumpur High Court on 29 May. All pleaded not guilty and bail was set at RM5000. Tian Chua, Hishamuddin Rais, Tamrin Ghafar and Haris Ibrahim paid the bail and were released pending trial.[5] As an act of protest, Safwan Anang did not and was sent to Sungai Buloh prison for two days. On 31 May, he was brought back to Court and was released on bail.[6]

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1 Austria, Canada, the Czech Republic, Denmark, Ireland, Japan, Poland, Russia, Slovakia, the United Kingdom and the United States of America.

2 Prime Minister Najib Razak first announced the repeal of the Sedition Act during a speech at the Attorney General's chambers in 2012. He recently reiterated the pledge to repeal the Act in London on a BBC World News programme on 2 July 2013.

3 Malaysiakini - *"Adam Adli to be charged with sedition tomorrow"*, - 22 May 2013.

4 Malaysiakini - *"No pillow or blanket for Adam to sleep, says lawyer"* - 21 May 2013.

5 Free Malaysia Today – 'Tian Chua and three others face sedition charge' - 29 May 2013.

6 ABN News – 'Student activist Safwan Anang freed on bail' - 31 May 2013. The decision of Safwan's case will be made on May 16 2014.

In February 2014, the Court dismissed an application made by Tian Chua, Adam Adli and Hishamuddin Rais to quash the sedition charges. (The application was made on the grounds of abuse of the court process and the fact that the prime minister had promised to repeal the Sedition Act in 2012.) On 5 March 2014, they filed a second application on the grounds that the charges were a breach of the Federal Constitution guarantee of freedom of expression.[7]

On 21 February 2014, the Kuala Lumpur High Court found prominent human rights lawyer Karpal Singh guilty under Section 4(1)(b) of the Sedition Act 1948. The prosecution stemmed from a press conference on 6 February 2009 at Karpal Singh's chambers at the height of a constitutional crisis in Perak state that year following the 2008 elections.

Karpal had questioned the decision of the Sultan of Perak, Sultan Azlan Shah, (who previously served as Lord President of the Supreme Court) to fire the Chief Minister. Karpal suggested this was beyond the Sultan's constitutional powers. He was initially acquitted of sedition charges on 11 June 2010 by the high court without his defence being called. But following an appeal by the prosecution, the Court of Appeal ordered Karpal Singh to enter his defence.

The case was returned to the high court for Karpal's defence and he was subsequently convicted and fined by the high court. However, with appeals against the conviction and sentence outstanding, Karpal Singh died tragically in a road accident on 17 April 2014.

Printing Presses and Publication Act 1984 (PPPA)

The PPPA allows government control over the media. Regulation ensures that only those media companies closely linked to the ruling coalition are allowed to operate.

On 19 December 2013, *The Heat*, a news weekly, was suspended indefinitely by the Home Ministry. This was widely believed to be over a front page article on Prime Minister Najib Razak and the free-spending lifestyle of his wife, Rosmah Mansor. This suspension prompted the Malaysian Bar to call for the PPPA to be repealed on the grounds that it curtails media freedom of expression and hence limits one of the checks to government abuse of power. The Bar stressed that there should be an independent commission for media publications as arbitrary licensing in the hands of the Home Minister has no place in a modern democracy.[8]

Throughout 2013, thousands of copies of opposition political party publications were seized and destroyed. These included Parti Islam's *Harakah*. Parti Keadilan Rakyat's *Suara Keadilan* and the Democratic Action Party's *The Rocket*. Officers from the Home Ministry not only seized the publications but also raided vendors' stalls. The Home Minister alleged that the publications had violated Section 5 of the PPPA for distributing the party papers to non-party members.

Media control and censorshop

Malaysia's mainstream media remains significantly state-controlled. Malaysia was ranked 145th on the Reporters without Borders Media Freedom Index in 2013. On 3 May 2013, the Centre for Independent Journalism (CIJ)[9] marked World Press Freedom Day by pointing out that violence and abuse were being carried out against the Malaysian media in the run-up to the 13th General Election. CIJ found 13 media-related violations since April 2013 ranging from online technical interference to physical attacks on reporters.

In April 2013, just days after parliament was dissolved and the date for the general election was announced, various alternative media websites including *Free Malaysia Today, Malaysiakini, the Malaysian Insider* and *Sarawak Report'* were targeted by consistent Distributed Denial of Service (DDoS) attacks. Independent radio stations *Radio Free*

7 The case will be heard on 22 May 2014

8 The Malaysian Times, 'Repeal printing presses publications act, urges Malaysian Bar' - 28 December 2013.

9 Yahoo News - 'GE13 CIJ says media being abused in election coverage' - 3 May 2013.

Sarawak and *Radio Free Malaysia* also had their broadcasts systematically jammed.[10] In April 2014, it was reported that *Radio Free Sarawak* broadcasts were once again being jammed.[11]

On 3 July 2013, Pusat Komas, together with the KL and Selangor Chinese Assembly Hall Civil Rights Committee (KLSCAH CRC), organised a private screening of *No Fire Zone*, a film about atrocities in Sri Lanka.

Prior to the screening, one of the organisers, Lena Hendry, received a call from the Censorship Board of the Ministry of Home Affairs, asking the organisers not to screen the film because it had not been passed by the Censorship Board. She replied that the screening was private and attendance was only by invitation. The Sri Lankan Embassy in Malaysia also tried to stop the screening.

Half an hour after the start of the screening, about 30 officials from the Home Ministry (KDN), immigration officials and the police entered the venue and requested to check the film. After the screening, these officials insisted on checking the identity cards of all participants before they left the venue; they also ordered the organisers to go to the police station.

On 19 September,[12] the Home Ministry and Attorney General's Chambers filed a charge against Lena Hendry under Section 6 of the Film Censorship Act 2002 for screening a film that had not been approved by the Censorship Board. Lena Hendry was granted bail of RM1000 pending trial. If convicted, Ms. Hendry is liable to a fine between 5000 and 30,000 ringgit or to imprisonment for a term not exceeding three years or both.

Recommendations

We entreat the UN Human Rights Council to make urgent representations to the Malaysian Government, urging them to:

- Repeal the Printing Presses and Publications Act in order to protect press freedom;
- Repeal the Sedition Act as promised by the prime minister to protect freedom of expression;
- Revoke the amendment of 114 A to the Evidence Act to shift back the burden of proof of offences to the prosecutor;
- Revise the Malaysian Communications and Multimedia Act to safeguard freedom of information and expression on the internet.

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* Suaram Rakyat Malaysia (SUARAM) NGO(s) without consultative status, also share the views expressed in this statement.

10 Human Rights Watch – *"Malaysia: Violence, cyber attacks threaten elections"* - 1 May 2013.

11 Sarawak Report – 'CAUGHT! Malaysia's RTM linked to illegal jamming of RFS' - 26 April 2014.

12 MSN News – 'KOMAS staff charged for no fire zone screening' - 18 September 2013.